

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

HOPI TRIBE, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official
capacity as President of the United States,
et al.,

Defendants.

Case No. 1:17-cv-02590 (TSC)

UTAH DINÉ BIKÉYAH, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official
capacity as President of the United States,
et al.,

Defendants.

Case No. 1:17-cv-02605 (TSC)

NATURAL RESOURCES DEFENSE
COUNCIL, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official
capacity as President of the United States,
et al.,

Defendants.

Case No. 1:17-cv-02606 (TSC)

CONSOLIDATED CASES

**FEDERAL DEFENDANTS' RESPONSE IN OPPOSITION
TO MOTIONS FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE**

Federal Defendants oppose the Motions of the Law Professors, Members of Congress, Conservatives for Responsible Stewardship, Local Elected Officials, Archaeological Organizations, National Congress of American Indians et al., and Outdoor Alliance (together “Proposed Amici”) for leave to file briefs as amicus curiae (“Amicus Motions”) responding to Federal Defendants’ Motion to Dismiss the claims of the three groups of plaintiffs in this consolidated case. See ECF Nos. 75, 82, 84, 87, 91, 93, and 94, respectively. The Court should exercise its discretion to deny the Amicus Motions because Federal Defendants will be prejudiced by having to review and respond to the proposed seven additional substantive briefs—each of which expressly oppose Federal Defendants’ Motion to Dismiss.

Discussion

In this consolidated case, Plaintiffs challenge Proclamation 9681, which modified the Bears Ears National Monument (“Monument”). Plaintiffs allege that the Proclamation violated the Antiquities Act and various constitutional provisions. On October 1, 2018, Federal Defendants moved to dismiss Plaintiffs’ claims, arguing that the Court lacks subject matter jurisdiction due to, *inter alia*, lack of standing and ripeness, and that Plaintiffs’ claims fail on the merits, including because the Proclamation was authorized by the Antiquities Act. See ECF No. 49. On the same date, Federal Defendants moved on parallel grounds to dismiss the Plaintiffs’ claims in the related case, *The Wilderness Society v. Trump* (“TWS”), No. 1:17-cv-2587, which involves challenges to Proclamation 9682, modifying the Grand Staircase-Escalante National Monument.

The three plaintiff groups in this case have each filed opposition briefs responding to Federal Defendants’ motion to dismiss. ECF Nos. 71, 72, and 74. In *TWS v. Trump*, the two plaintiff groups have also filed opposition briefs. See *TWS*, ECF Nos. 61, 63. These five

opposition briefs present a combined total of 199 pages—excluding exhibits—addressing the arguments in Federal Defendants’ motions to dismiss in the two cases.¹ In addition, eleven states (the “States”) have filed, as of right under LCvR 7(o)(1), a 25-page amicus brief in each of the two cases. ECF No. 89; *TWS*, ECF No. 74.

The Proposed Amici in this case now seek to add seven briefs, containing 148 additional pages (excluding exhibits), to the briefing in this case. Some of the same organizations and individuals (as well as one additional proposed amicus) are also seeking permission to file briefs totaling 130 pages in *TWS v. Trump*. See *TWS v. Trump*, ECF Nos. 65, 67, 69, 71, 73, and 76. All of these proposed amicus briefs (as well as the States’ two amicus briefs and the five named-plaintiffs’ briefs) argue that Defendants’ motions to dismiss in the two cases should be denied.

This blitz of non-party briefing opposing Federal Defendants’ positions in this litigation is inherently prejudicial to Federal Defendants. Given the already robust briefing presented in Plaintiffs’ opposition briefs, granting the Amicus Motions is unnecessary, and it may impede the Court’s ability to render an expeditious decision on Defendants’ motion to dismiss—a concern Plaintiffs have previously raised. Sept. 24, 2018 Status Hearing Tr. 39:11-40:13. While some of the Proposed Amici argue that any prejudice arising from their motions has been cured by the Court’s extension of Federal Defendants’ reply deadline to December 13, they are wrong. See, e.g., ECF No. 93 at 2. The extension of the reply deadline to December 13 was sought because the extension of the *Plaintiffs’* response deadline to November 15 made filing a reply brief within two weeks of that date unworkable, given that Federal Defendants had to respond to

¹In both cases, Plaintiffs filed identical joint appendices that include 237 pages of exhibits. ECF No. 73; *TWS*, ECF No. 62. In addition, the plaintiffs in the five cases attached another 200 *additional* pages of exhibits to their opposition briefs. See ECF Nos. 71, 72, and 74; *TWS*, ECF Nos. 61 and 62. Certain of the Proposed Amici also include exhibits, totaling approximately 300 pages in each of the two cases. See ECF Nos. 87, 91, and 93; *TWS*, ECF Nos. 65, 69, and 73.

multiple briefs from the Plaintiffs and the intervening Thanksgiving holiday. See ECF No. 65 at 3. Similarly, the fact that some of the proposed amicus briefs have arguments that overlap with Plaintiffs' arguments does not reduce Federal Defendants' prejudice, because Federal Defendants do not have adequate time or space to address every formulation of the arguments that Proposed Amici may have presented.

Under these circumstances, the Court should deny the Amicus Motions.

Respectfully submitted this 27th day of November, 2018,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of November, 2018, I filed the above pleading with the Court's CM/ECF system, which provided notice of this filing by e-mail to all counsel of record.

/s/ Romney S. Philpott
Romney S. Philpott